

COMMON ORDERS ON IA NO X and XI

The defendant No.10 filed IA.No.X under sec.151 of CPC. Seeking reopen the case for the purpose to file written statement.

2. The defendant No.10 filed IA.No.XI under section 151 of CPC permit to file the written statement take on record.

3. The defendant filed an sworn affidavit in support of IA.No.X and XI stating that, after service of summons he appeared through his counsel, but afterwards he has not instructed his counsel due to lack of non availability of the certain documents to file the written statement in the above case, the plaintiffs have taken so

many contentions on basis of the two registered sale deeds and other documents and also they have pleaded regarding to the family of their vendor, the same was not traced by him regarding to the vendors of the plaintiffs family. Thereafter he applied the certain documents so far as concern to the suit schedule property which was purchased by him under the registered sale deed in the meanwhile due to the Covid – 19 he was not instructed and also he was not met his counsel in his office to file the written statement, now when he was in the Channapatna, he enquired his counsel regard to the above case, then only he came to know about the above case which is stands of judgment, hence he instructed his counsel to prepare the written statement to file in the above case, without his written statement the suit will not complete in a judicious manner and his written statement will clinches the issues and given effective and collateral facts to disprove the case, the suit schedule property is under the turmoil between his family and plaintiffs. Hence it is just and necessary and much warranted to reopen the case and file his written statement, in the above case, the above said reasons are bonafide or not malafide or intentional one, **Hence, allow the applications.**

4. The counsel for the plaintiff filed an objection to applications and contended that, the applications filed by the defendant No.10 is not maintainable and same is liable to dismissed.

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Further contended that with great difficulties of service of summons to defendant No.10 through a special process server then appear before court be engaging counsel, earlier to engage counsel, said counsel under take to appear before the court and then filed power. Other defendants are not appeared, placed exparte. Defendant No.10 filed application under section 148 of CPC for extension of time to file statement, thereafter either counsel or defendant No.10 are not appeared before the court till last date of hearing i.e., nearly 2 years she did not bother about above case, on 24.09.2021 she and her counsel appear before this court in OS No. 193 of 1999 filed by her and argue the matter. On the same day above case was pending and it was heard by and posted for judgment, by the time above case was called defendant No.10 or counsel are not present in the court hall. After hearing arguments above case posted for judgment. Now defendant appeared by filing application seeking permission to file statement with untenable reasons. Once case is posted for judgment it can not be recalled unless and until specific reasons as to be assigned. Here defendant No.10 was not assigned any reasons for absence. Since defendant No.10 appeared in the case filed by her but she did not appear in above case, for that she did not assign specific reasons in the affidavit filed in support of application. The reason stated in the affidavit filed in support of the application does not disclose any just or valid reasons to grant relief. **Hence, reject the applications filed by the defendants with cost.**

5. The following points arise for consideration of this court:-

POINTS

1. Whether the IA.No.X and XI filed by the defendant No.10 is deserves to be allowed?
2. What Order?

6. Heard both sides and perused the materials on record. I answer the above points as follows:-

Point No.1: In the Affirmative

Point No.2: As per final orders
for the following:-

REASONS

7. **Point No.1:** This suit filed by the plaintiff against the defendant for the relief of Declaration and Injunction. At the time of judgment this applications are filed by the defendant No.10 seeking to file written statement and reopen the case. The plaintiff counsel objected the same.

8. This court perused the materials available on record, it is noticed that, summons served upon defendant No.10 through special process server, thereafter defendant No.10 appeared before the court and sought adjournment to engage the counsel. Thereafter the

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defendant No.10 filed application Under section 148 of Cr.P.C., for extension of time to file written statement, there after either his counsel or defendant No.10 not appeared before this court. When the matter posted for judgment the defendant filed present application to recall and reopen. In this stage the defendant filed present applications. The burden lies on the defendant for disprove the plaintiff averements. Hence the evidence of defendant very much necessary. If these applications are allowed not hardship caused to the plaintiff. The plaintiff filed formal objections to the applications. Hence, the applications filed by the defendant No.10 is deserves to be allowed with heavy cost. **Hence, answer the point No.1 in the Affirmative.**

9. **Point No.2:**For the above reasons I proceed to pass the following:-

ORDER

The IA.No.X and XI filed by the defendant No.10 is hereby allowed with cost of Rs.500/-.

Case is reopen, stage is recalled and permitted to defendant No.10 to file written statement.

T.I. is extended.

Call on 01.02.2023.

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**Addl. Civil Judge & JMFC.,
Channapatna.**